



## PLAIN ENGLISH GUIDE

# BEWARE OF CONTESTED WILLS

Advertisements are regularly appearing in Rural and National papers inviting family members who are not happy with the Will of a deceased person to investigate whether or not they should challenge the Will.

This should be a concern because the costs of challenging a Will can come out of the estate. This was set out in an Article in the Sydney Morning Herald on 29th July 2003 titled 'Sloppy Lawyers warned their costs may be capped'. The article highlighted that a daughter who challenged an estate worth \$1,500,000.00 received the sum of \$60,000.00 and the costs of her challenge were in the sum of \$74,500.00 and the legal costs to the estate were \$130,000.00

Another instance highlighted that an estate worth \$154,000.00 was responsible for legal costs in the sum of \$112,000.00. It is sometimes cheaper for executors to pay out a dissatisfied family member so as to save unnecessary legal costs.

Practical steps to be considered to minimise a challenge to your Will include:

1. Consider telling your family what is in your Will. This way there are no nasty surprises coming forth at an otherwise emotional time when people are vulnerable and upset.

We consider it better to have a disagreement about your estate while you are alive so at least you can have your say.

2. Any asset validly gifted more than three years before your death cannot be challenged. Any gift made within three years of the date of your death can be challenged and set aside under the 'Notional Estate Rule'. Of course, not too many people know the date which is three years from your death so if this is a viable option, better to start sooner rather than later.
3. Enter into an agreement under s31 of the Family Provisions Act and have the agreement approved by a Court. All family members can enter into a legally binding agreement.

If you would like to discuss any of the above suggestions further please contact your closest Commins Hendriks Office for more information.